



Montana Board of Environmental Review

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MINUTES JUNE 3, 2005

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:15 a.m., on Friday, June 3, 2005, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Robin Shropshire, Bill Rossbach, Gayle SkunkCap, Kim Lacey, Susan Brooke and Don Marble

Board Attorney Present: Tom Bowe, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director, Director's Office (DIR); Tom Ellerhoff, DIR; Lisa Peterson, DIR; John North, Legal, DIR; Ed Hayes, Legal, DIR; Keith Jones, Legal, DIR; James madden, Legal, DIR; Jane Amdahl, Legal, DIR; David Rusoff, Legal, DIR; Claudia Massman, Legal, DIR; Norm Mullen, Legal, DIR; Steve Welch, Permitting & Compliance Division (PCD) Administrator; Judy Hanson, PCD; Charles Homer, Air Resources Management Bureau (ARMB), PCD; Julie Merkel, ARMB, PCD; Jan Brown, ARMB, PCD; Bob Habeck, ARMB, PCD; Debbie Skibicki, ARMB, PCD; Eric Merchant, ARMB, PCD; David Klemp, ARMB, PCD; Eric Thunstrom, ARMB, PCD; Sara Williamson, ARMB, PCD; Kari Smith, Water Protection Bureau (WPB), PCD; Tom Reid, WPB, PCD; Brian Heckenberger, WPB, PCD; Bonnie Lovelace, WPB, PCD; Jon Dilliard, Public Water Supply Bureau (PWS), PCD; Ed Thamke, Waste & Underground Tank Management Bureau (WUTMB), PCD; Rick Thompson, WUTMB, PCD; John Arrigo, Enforcement Division (ENF) Administrator; Frank Gessaman, ENF; Art Compton, Planning, Prevention & Assistance Division (PPAD) Administrator; Bob Bukantis, Water Quality Planning Bureau (WQPB), PPAD; Chritian Levine, WQPB, PPAD; David Bowers, Hazardous Waste Site Cleanup Bureau, Remediation Division (REM); John Koerth, Mine Waste Cleanup Bureau, REM.

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Jay Bodner, Montana Stockgrowers Association; David Nielson, City of Helena; Krista Evans, Legislative Services Division, Environmental Quality Council; Don Allen, Western Environmental Trade Association; Amy McNamara, Greater Yellowstone Coalition; Brenda Lindlief-Hall, Tongue River Water Users; Bud Clinch, Montana Coal Council; Bruce Bender, City of Missoula; Bill Schafer, Fidelity Exploration; John Van Daveer, Butte-Silver Bow; Walt Choquette, Butte-Silver Bow; Bob Farren, Butte-Silver Bow; Bob Hawks, SD 33; Bruce Williams, Fidelity Exploration; Mary Beth Marks, USDA Forest Service; Dan Hoven, Bull Mountain Development Company; Bill Courtney, EMIT/Powder River Gas; Jennifer Hendricks, Montana Environmental Information Center (MEIC); Patrick Judge, MEIC; Anne Hedges, MEIC; George Hays, MEIC (via telephone); Julie DalSoglio, Environmental Protection Agency; Dorothy Harper; George Harper; Patricia Helvey; Kelly Flaherty Settle, Northern Plains Resource Council (NPRC); Michael Reisner, NPRC; Brian Cebull, Nance Petroleum; Duane Zimmerman, Nance Petroleum; Mike Bergstrom, Fidelity Exploration; Tom Osborne, HydroSolutions; Corrine Wilson, Citizens for Resource Development (CFRD); Dick Wilson, CFRD; Janet Rice, CFRD; Betty Aye, Powder River County Commissioners; Donna Wilson, CFRD; Calvin Rice, CFRD; Rick Rice, CFRD; Sarah Bond, Attorney General's Office; Roger Muggli, Tongue and Yellowstone Irrigation District; Ray Muggli; Doug McRae; Clint McRae, Rosebud Protection Association; Nick Golder, Golder Ranch; Norma Bixby, House District 41; Harold Yeager.

I.A. Review and approve minutes of April 1, 2005, meeting.

Ms. Lacey MOVED for approval of the April 1, 2005, meeting minutes. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.B Review and approve minutes of May 3, 2005, teleconference meeting.

Ms. Lacey MOVED for approval of the May 3, 2005, teleconference meeting minutes. Mr. SkunkCap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a In the matter of CR Kendall Corporation, BER 2002-09 MM.

II.A.1.b In the matter of Flying J Petroleum, Inc., BER 2003-14 HW.

II.A.1.c In the matter of the City of Lewistown, BER 2004-15 WQ.

II.A.1.d In the matter of Nature View Estates, BER 2004-16 SUB.

II.A.1.e In the matter of Westmoreland Resources, Inc., BER 2005-01 SM.

II.A.1.f In the matter of Darwin Simac d/b/a Jackson Creek Saloon, BER 2005-05 PWS.

II.A.1.g In the matter of Bar S Livestock, Inc., BER 2005-06 WQ.

Mr. Bowe said summaries for these cases were listed on the agenda and that he had nothing further to add.

II.B.1 In the matter of a briefing relating to the Upper Blackfoot Mining Complex.

Mr. Livers said this item was on the agenda at the interest of several Board members, due to the significant rain event of May 10.

Mr. Levine described the locations of the pictures that were included in a handout. Regarding concern about the dam and the tailings dam, he said the reservoir levels never got very high – that it was pretty much a normal event for up there. He said everything is stable.

III.A.1 In the matter of final action on the amendment of rules at ARM 17.8.102, 103, 202, 302, 602, 767, 802, 902, 1002, 1102, 1202, 1302, 1305, 1310, 1402 and 1502 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules.

Mr. Bowe said he conducted the hearing and that there was no public interest aside from EPA. He provided more detail regarding the routine nature of the rulemaking.

Chairman Russell called for a motion to amend the rules as noticed, adopt the presiding officer's report, the 311 and 521 analyses and responses to comments. Ms. Brooke so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.2 In the matter of final action on amendments to rules at ARM Title 17, Chapter 30, Subchapter 13, pertaining to the state's rules for concentrated animal feeding operations (CAFOs).

Ms. Lovelace explained that the federal court ruling is still interfering with this rulemaking. She said the EPA has not come forward with clear direction on the status of the federal rules in question. She said the Department is requesting action from the Board to preserve the work that the Department has put into this rulemaking by extending the deadline six months.

Discussion commenced regarding the public's ability to comment again if significant changes are made and whether the Department adequately addressed the comments received in opposition to the rulemaking, and legislation enacted by the Montana Legislature.

Chairman Russell called for public comment on the rulemaking. No one responded.

Mr. Rossbach MOVED to issue an amended notice to obtain a six-month extension. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of the request for rule initiation to amend ARM 17.8.504, 505 and 514 for the annual adjustment of air quality operation and open burning fees, and to revise air quality permit application fees.

Mr. Homer explained that application and annual operation fees assessed to the regulated community largely support the Air Quality Program, and how the Legislature establishes appropriations. He said the Board is to establish a fee schedule that will collect sufficient money to fund the program without maintaining a balance.

Mr. Homer said the Department is proposing to raise the application fee from \$500 to \$3,000 for new major facilities; to raise the administrative portion of operating fees from \$400 to \$470 and decrease the per ton fee from \$21.58 to \$21.53; and to raise the application fee for major open burners from a base fee of \$250 to \$350, from \$7.67 per ton for particulate to \$10.87, and from \$1.92 for NO_x and VOCs to \$2.72. He said the Department had met with all the necessary committees and special interest groups and recommends the Board initiate the rulemaking.

Chairman Russell called for public comment. There was no response.

Chairman Russell called for a motion to initiate the rulemaking and to appoint a presiding officer. Ms. Brooke so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Chairman Russell noted that the Flathead City-County Board of Health is amending its air pollution control regulations and that the time Mr. Homer, his staff and Mr. Rusoff have spent reviewing them has been appreciated.

III.D.1 In the matter of final action regarding the MPDES General Permit No. MTR04000 for storm water discharge associated with small municipal separate storm sewer systems (MS4), BER 2004-18 WQ.

Mr. Bowe provided background regarding the contested case: the case involves the Department and Montana's seven largest cities (the Cities) in regards to a general stormwater discharge permit; both the cities and the DEQ filed motions for summary judgment; Mr. Bowe had conducted a hearing where the attorneys for both sides argued; he had prepared a proposed decision and a proposed order on the motions for summary judgment; the proposed decision and order would grant DEQ's motion for summary judgment and end the case; the Cities filed exceptions to the proposed decision; DEQ filed responses to those exceptions; and the Cities' filed a reply to DEQ's responses; all of these documents were included in the Board packets. Mr. Bowe suggested the next step was to allow the attorneys for the parties to present argument to the Board on the issue.

Mr. Nielson, representing the City of Helena, explained that the EPA adopted rules dealing with stormwater controls in 1999 for small municipalities; the EPA then allowed the states to adopt those requirements, set guidelines and issue the permits. He said the seven largest cities in Montana were informed that they would have to apply for and receive a permit for stormwater discharge. He said the seven cities were all united in this dispute because they all believe that the monitoring and sampling requirements are legally excessive.

Mr. Nielson said the EPA requires six minimum control measures to be implemented through best management practices. He said the DEQ created a new Subchapter 11 for these rules and that nowhere in them are there monitoring requirements; however, monitoring reporting requirements are included under Part 4 of the general permit. He claimed that DEQ's reason for the monitoring is to establish a statewide database on the contents of the stormwater in the seven cities and to do so at the Cities' expense. He said the use of median values proposed by DEQ had no practical or viable use for best management practices. He said the monitoring made the state rule more stringent than the federal rule and that it goes against legislative intent. Mr. Nielson further stated that the monitoring was not included in Subchapter 11, the stormwater rules, but rather was included in Subchapter 13, the general permit rules.

Mr. Nielson requested that the Board grant the Cities' Motion for Summary Judgment and delete the Part 4 monitoring requirements from the general permit.

Ms. Laughner, on behalf of the Cities, said they join the City of Helena's argument.

Chairman Russell noted that the terms "legally excessive" and "impractical" were used in reference to the monitoring throughout Mr. Nielson's testimony, but they had not been mentioned in the briefs.

Mr. Madden said there were no questions of facts in this case, but rather of the permit and rules, and the rule notices. He said there are two legal questions regarding monitoring: 1) Does DEQ have the authority to put it in the permit? And 2) Is DEQ being more stringent than the EPA? He said discussions regarding monitoring took place as far back as 2002. He said the permit provisions only require that the Cities consider why there is an exceedance, try to find the cause, and propose a solution if they can.

Mr. Madden said the general permit is issued under Subchapter 13, not Subchapter 11. He said Subchapter 13 has monitoring authority and DEQ decided to exercise that authority. He addressed the issue of stringency and referred to House Bill 521 from the 1995 legislative session. He said the DEQ recommends the Board adopt the hearing examiner's proposed decision.

Ms. Laughner argued that the first the Cities saw of the numerical chart was upon receipt of the general permit. She argued that it should have been included in the rulemaking so they could have had a chance to comment on it

Ms. Brooke commented that the Cities were sandbagged; that they did not know there would be monitoring requirements. She said it should have been included in the rulemaking notice.

Mr. Rossbach MOVED to adopt the proposed decision of Tom Bowe with the additional finding that there is no stringency requirement needed, that it is not more stringent than the federal rule, and therefore the stringency process did not need to be fulfilled. Mr. Marble SECONDED the motion.

Mr. Bowe suggested that no additions to the proposed decision were necessary, that the stringency issue was decided two years ago during the rulemaking process. Further discussion took place regarding this issue.

Chairman Russell said the Board is amending the hearing examiner's proposed decision on pending motions, Case No. BER 2004-18 WQ, to include Item 7 on Page 19 of DEQ's Response to Cities' Exceptions to Proposal for Decision. As the member who made the motion, Mr. Rossbach concurred. Mr. Marble also concurred. The motion CARRIED with a 6-1 VOTE.

Chairman Russell called for a motion to authorize the Board Chair to sign an order, which will be modified to include Item 7 of the DEQ's response on Page 19. Mr. Rossbach so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a 6-1 VOTE.

III.C In the matter of the three-year review of temporary water quality standards for the New World Mining District.

Chairman Russell explained that the next item is a public hearing required by 75-5-312(10), MCA, for the purpose of reviewing the temporary water quality standards and implementation plan for the New World Mining District, located northeast of

Yellowstone National Park. He called the public hearing to order and provided background information regarding the temporary standards. He said the Board is required to review the standards every three years and must consider the progress made. He said the Board may terminate the temporary standards based on information received at the time of review.

Mr. Koerth said the temporary standards were adopted in 1999 for a period not to exceed fifteen years. He said the standards were established on the basis of the implementation plan that identifies the water quality limiting factors and that action will be taken to eliminate the water quality limiting factors. He said the Board will have the option of keeping the temporary standards in place as previously adopted; revoking the standards; or modifying the standards to reflect the progress made towards cleanup. He said the United States Forest Service is the agency responsible for the cleanup. He said two specific activities were assigned to DEQ in the consent decree: 1) to establish temporary water quality standards; and 2) to issue a certificate of completion for this project. Mr. Koerth said there are two more years of work planned for this project; therefore, the DEQ recommends that the temporary standards remain in place as adopted while that work is performed.

Ms. Marks provided further background information for the benefit of the new Board members. She recapped the work completed from 1999 through 2004. Ms. Marks explained that this year is the start of a very large, two-year contract and provided details of that contract. Ms. Marks shared information regarding what the Forest Service envisioned for future contracts. She said improvement is starting to be seen at stations further down from the headwaters and recommends the Board not change the temporary standards.

Ms. Marks said the reclamation fund started at \$22.5 million, in an interest-bearing account. She said as of July 31, 2004, the balance of that account was about \$14.5 million. She said the account had earned \$5.3 million in interest as of July 2004.

Mr. Rossbach engaged discussion regarding where the Forest Service was with respect to their goals for improving water quality. Also discussed was the relationship between concentration of metals and stream flow.

Ms. Shropshire engaged discussion regarding groundwater concentrations. She suggested that because the flow can make the concentrations erratic, looking at the groundwater as an indicator of what's happening might be helpful.

Mr. SkunkCap engaged discussion concerning biological monitoring of macroinvertebrates, fish, and whether wildlife was moving back into the area.

Chairman Russell called for public comment.

Mr. Whittington said the Beartooth Alliance has followed this project closely and was involved in the negotiation of the consent decree in 1998. The Alliance supported the establishment of the temporary standards in 1999 and recommended continuation of

the standards at the triennial review in 2002. He said members of the Alliance believe satisfactory progress is being made and that the temporary standards should be kept in place as they are. He also said the Alliance had requested that the Forest Service prepare a detailed, long-term water quality monitoring and project maintenance plan.

On behalf of Ms. McNamara, Greater Yellowstone Coalition, Mr. Whittington read her written statement, which supported continuation of the temporary standards.

Ms. Marks affirmed that the Forest Service plans to put together a long-term water quality-monitoring plan, and to be available to update the Board in a year.

Ms. Shropshire MOVED to keep the temporary water quality standards in place. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.D.2 In the matter of final action in regard to violations of the Montana Underground Storage Tank Act at Save-Rite South and Save-Right West, BER 2005-07 UST and BER 2005-08 UST.

Mr. Bowe said a stipulation for dismissal that is signed by both parties was included in the Board packets, along with two proposed orders. Mr. Bowe recommended the Board approve his proposed order, "Order Dismissing Contested Case," as it was in a cleaner format.

Chairman Russell called for a motion to authorize the Chair to sign the Order Dismissing Contested Case. Ms. Lacey so MOVED. Mr. SkunkCap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.D.3 In the matter of final action regarding the request for hearing of Lang Creek Brewery, Inc., BER 2004-13 WQ.

Mr. Bowe said a stipulation for dismissal, signed by both parties, was included in the Board packets and that an order for the Chair to sign dismissing the case was also included.

Chairman Russell called for a motion to authorize the Chair to sign the order dismissing the case. Ms. Lacey so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.E.1 In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Adding to the summary on the agenda, Mr. Bowe said the parties have requested until July 19 to submit a schedule or settlement papers, and that he had granted the request.

Chairman Russell called for a motion to appoint Mr. Bowe permanent hearing examiner for this case. Mr. Rossbach so MOVED. Mr. SkunkCap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.E.2 In the matter of violations of the Opencut Mining Act by Kenneth Mikesell, d/b/a Mikesell Gravel Mine, BER 2005-10 OC.

Adding to the summary on the agenda, Mr. Bowe said he had received a proposed schedule from DEQ, but not from Mikesell. He said he issued a scheduling order and that if the parties follow that schedule, the hearing would probably be held in October.

Chairman Russell called for a motion to appoint Mr. Bowe permanent hearing examiner for this case. Mr. SkunkCap so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.E.3 In the matter of the application by Patty Irvine, d/b/a Marks Environmental Service, for renewal of septage disposal license, BER 2005-11 SW.

Mr. Bowe said he issued the first prehearing order and requested the parties consult with each other to propose a schedule. He said he received a proposed schedule from DEQ, but not from the applicant. He said he issued a scheduling order on June 1 and that if the schedule is followed, the hearing would be held in October.

Chairman Russell called for a motion to appoint Mr. Bowe permanent hearing examiner for the case. Ms. Lacey so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.E.4 In the matter of the notice of violation of the Opencut Ming Act by Mickelson Rock Products, LLC at the Tricon Pit #2, BER 2005-12 OC.

Mr. Bowe had nothing further to add beyond the summary in the agenda.

Chairman Russell called for a motion to appoint Mr. Bowe permanent hearing examiner for this case. Ms. Lacey so MOVED. Mr. SkunkCap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.E.5 In the matter of violations of the Montana Operator Certification and Public Water Supply Laws by Richard Kelly at the Ten Mile/Pleasant Valley Lagoons, BER 2003-13 PWS.

Mr. Bowe said he issued the first prehearing order on May 19 and requested the parties propose a schedule by June 2, but he had not received any yet.

Chairman Russell called for a motion to appoint Mr. Bowe as permanent hearing examiner for this case. Mr. Rossbach so MOVED. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.F In the matter of the remanding of contested case No. BER 2003-04 AQ, regarding the issuance of Air Quality Permit No. 3182-00 for the Roundup Power Project.

Mr. Bowe explained that the second paragraph of the summary on the agenda refers to a motion to toll time; however, the Board received a notice that Bull Mountain Development Company had withdrawn that motion. He said the only issue left was the

opinion of the Supreme Court and the expected remand of the contested case to the Board. Mr. Bowe directed the Board to a memo he wrote that provided background on the case.

Mr. Bowe said the Montana Supreme Court had denied Bull Mountain's petition for rehearing. He said the next step would be for the Supreme Court to issue a remitter to send the case back to Musselshell County, and the district court would then return the case to the Board. Mr. Bowe said he would expect it all to happen by the next Board meeting.

Mr. Hoven said Bull Mountain was planning to commence construction in order to preserve the permit.

Mr. Hays commented that they felt the permit had already expired – the PSD permit in August 2004 and the MACT approval this month [June 2005]. He said he raised the standard of review issue before the PSD permit ever started and he believed that the Montana Supreme Court ultimately had adopted his position. He said the only option really was for the Board to hold an entirely new hearing on this matter. Mr. Hays also discussed the MACT case between the same parties and said he believed that it would be remanded back to the Board also and suggested that the two cases be consolidated at that point.

Mr. Rusoff said most of the issues raised by Mr. Hays aren't before the Board today. He said the only issue before the Board today, with the withdrawal of the motion to toll time, is how to proceed if the case had been remanded to the Board prior to this meeting. Since that did not happen, it is his opinion that there is no action for the Board to take on this item today.

Mr. Bowe said the case is coming back to the Board and that it would be interesting to know whether DEQ and Bull Mountain felt the same as Mr. Hays, who believes a new hearing is necessary.

Mr. Hoven stated that, in his opinion, it wouldn't be in anyone's best interest to start at ground zero. He disagreed with the necessity of a new hearing.

Mr. Rusoff suggested the parties could file motions and responses to motions to address how to proceed.

Mr. Bowe said that while the case has not yet been remanded, the Board did have authority to tend to administrative matters concerning the case. He suggested that upon remand of the case to the Board, he would issue a scheduling order that requests the parties to set forth their positions on a remand plan and the reasons for them.

III.G In the matter of the adoption of revised FAQs on the Board's Website.

Mr. Bowe said that the Frequently Asked Questions (FAQs) had been adopted by the Board three years ago to provide information about the contested processes. He explained that some things had changed since the FAQs were written and that he had updated them with the changes noted in the agenda. He recommended the Board adopt the revised FAQs. Further discussion took place regarding the revisions and the reasons for them.

Chairman Russell called for public comment regarding revision of the FAQs.

Ms. Hedges said they were hard to find on the website. She also wondered if the changes incorporated the changes mandated by the legislature regarding appeals of air quality permits and suggested they should be.

Chairman Russell called for a motion to direct Mr. Bowe and other appropriate persons to update the FAQs on July 1 and to report back to the Board at the July meeting. Ms. Lacey so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.H In the matter of the petition for rulemaking, submitted by the Northern Plains Resource Council, regarding wastewater from coal bed methane development.

Mr. Bowe said the petition generally complies with the requirements of Model Rule 2 in ARM 1.3.205, with the exception of the exclusion of the interested persons addresses on Page 69. He said the petition was filed May 17, 2005, and the Board has 60 days from that date to either deny the petition or initiate rulemaking. He said the next regular Board meeting is scheduled for July 29, which would be 73 days after the filing date. Mr. Bowe believed the 60 days could be extended, pending the petitioner's willingness to allow it.

Mr. Bowe explained that if the Board were to deny the petition, the process would then end; if the Board decided to initiate rulemaking, the next step would be to give notice to the Water Pollution Control Advisory Council, which must be given at least 30 days prior to the first publication of proposed rulemaking to comment on it. The notice then would be submitted to the Secretary of State's office and must be in an acceptable format. Mr. Bowe highlighted problems with the formatting and other areas of the petition. He provided details of the history of the original rule at ARM 17.30.670, adopted in April 2003.

Discussion commenced among the Board regarding the format of the petition, the possibility of an extension or holding a special meeting, and how to proceed.

Mr. Reisner said the Petitioners disagree with most of Mr. Bowe's points and said they are not willing to waive the 60-day requirement. He requested that the Board hear the rulemaking proceedings and that a new presiding officer be appointed.

Mr. Fix urged the Board to initiate the rulemaking. He said the petition provides solutions to the problems associated with coalbed methane development and removes the exemption from nondegradation. He provided information regarding the amount of water removed from various aquifers and said it would take beyond our lifetimes for water to recharge them. He requested the Board be present for the rulemaking hearings.

Mr. Roger Muggli said the standards currently in place are not based on science. He said there were 20 days of exceedance over 1,000 at Miles City in April.

Mr. Ray Muggli said irrigated agriculture in southeastern Montana is a very powerful industry and should have the full consideration and protection that is given to other industries and other citizens in Montana. He urged the Board to initiate the rulemaking.

Mr. Doug McRae said he is concerned with current standards for Rosebud Creek and reduction of flows from coal seam aquifers. He said the conservation districts have authority under the Coalbed Methane Protection Program to provide up to \$50,000 compensation to landowners adversely affected by coalbed methane development. He requested that the Board initiate the rulemaking.

Mr. Clint McRae talked about sub-irrigation. He said there is no non-irrigation season on the Rosebud. He said with the petition, stock water would be exempt from reinjection or treatment as long as certain conditions were met. He urged the Board to initiate the rulemaking.

Mr. Golder gave background information concerning where ranching came from. He also talked about how he used his rangeland.

Ms. Bixby talked about two Fidelity permits for which recent hearings were held in Colstrip and Lama Deer. She said members of the Northern Cheyenne Tribe support the ranchers in voting for a land use ordinance for responsible development of coalbed methane in Rosebud County. She recommended the Board initiate the rulemaking.

Ms. Lindlief-Hall said the Tongue River Waters Users Association endorses the petition and would like the Board to initiate the rulemaking. She said treatment and reinjection are essentially effluent limitations, not water quality standards. She provided details of the Clean Water Act. She said ARM 17.30.1334 provided the Board ample authority to promulgate effluent limitation guidelines.

Mr. Barber said the Montana Environmental Information Center supports the petition and that the Board should initiate the rulemaking in the near future – not wait until the July meeting.

Mr. Rick Rice said he and others circulated a petition in Powder River County for two weeks and collected nearly 385 signatures in favor of energy development. From that, the Citizens for Resource Development group is being formed. He said the

group supports coalbed methane development and that they expect no impact to wells from it. He recommended the Board not initiate rulemaking and that the current rules remain in place.

Mr. Calvin Rice talked about economics and government entities, such as schools, counties and cities, trying to find money to operate and that if something isn't done, the state will continue to diminish. He talked about cloud seeding and degradation, and claimed that the sodium in the Tongue River is coming from soil seep off irrigation fields. He said he hoped the Board would find the petition unnecessary or that much deliberation would take place in regard to changes to the rules. He also suggested the Board hold a hearing in Broadus or Billings.

Ms. Aye urged the Board to deny the petition for the reasons stated by Rick and Calvin Rice and Mr. Bowe, and further urged the Board to visit a methane field.

Mr. Wilson said he supports coalbed methane development, that he feels there are enough rules in place to deal with the water, and that he would like to choose what to do with the water on his ranch.

Mr. Cebull made a few points referencing a letter from Bob Nance, Nance Petroleum. He requested the Board deny the petition.

Mr. Williams emphasized the time, science and effort put into the development of numeric standards and said there is no data to suggest that those rules are not working. He requested the Board deny the petition and discouraged the Board from making a decision now.

Mr. Ranney said the companies he represents request that the Board deny the petition. He talked about Pinnacle's permit, the first to have the numeric standards, and said analysis indicates that the discharge water meets all of the criteria in the permit. He urged the Board to retain Mr. Bowe for this rulemaking.

Ms. Abercrombie said the Montana Petroleum Association is opposed to initiating the rulemaking. She said the Petitioners should pay for and make the necessary changes to the petition to fit within the Secretary of State's standards.

Mr. Livers said the Department doesn't have a position on the merits of the petition yet and feels strongly that the Board shouldn't initiate the rulemaking now for two reasons: 1) to allow interested parties more time to review the petition; and 2) to allow an opportunity for the technical formatting concerns to be addressed. He discussed the issue of the Department assisting in the formatting of the petition.

Discussion took place among the Board concerning the petition and the rulemaking process.

Mr. Rossbach MOVED that the Board go forward and schedule a mutually convenient supplemental meeting within the 60 days, and direct the Department to

assist the Petitioners in getting the petition in proper format. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The Board discussed various dates for a special meeting to address the petition and the desire for an extension of the 60-day requirement. Chairman Russell announced that the Petitioners have now agreed to allow the Board an extension so that the petition can be addressed at the July 29 meeting. The Petitioners concurred.

Mr. Rossbach MOVED to postpone the decision regarding the petition until July 29. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

N/A General Public Comment

Chairman Russell opened the floor for general public comment.

Mr. Yeager commented that people on the Rocky Mountain Front were polled and 75% of those polled wanted oil and gas development.

IV. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Marble so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 5:37 p.m.

Board of Environmental Review June 3, 2005, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE